HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 18720 OF 2006

Between:

Srinivsulu S/o Late Sri Venkateswarlu, aged 30 years, Occ: Agriculture, Ponduru Village, Tangutur Mandal, Prakasam District and three others.

...Petitioners

AND

1. The Regional Joint Director, Guntur Zone, Endowments Department, Guntur and three others.

.....Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 18720 OF 2006

ORAL ORDER:

The petitioners, four in number, assail the order of the first respondent dated 26.8.2006 bearing reference Rc.No. 449/2006, whereby in purported exercise of *suo motu* jurisdiction, the first respondent set aside the order of the second respondent herein dated 18.7.2003.

2. The second respondent by the order dated 18.7.2003 had recognized the petitioners as landless poor persons entitled to the benefits under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, (for brevity 'the Act') in respect of lands of Sri Vejendlavari Tank, Ponduru Village, Tangutur Mandal, Prakasam District, a Charitable Institution, governed by the provisions of the Act.

3. The Petitioners claim to be cultivating tenants of the lands of the Endowment Institution; to be landless poor persons (as the expression defined under Section 82 of the Act); and therefore entitled to the benefits under Section 82 of the Act. By the proceedings dated 18.7.2003, the second respondent herein had declared the petitioners to be landless poor persons and allowed them to continue in occupation of the lands of the Institution.

4. Thereafter, it would appear, Sri V. Rama Rao and Sri Chitnidi Ranga Rao, residents of the village, represented to the first respondent that the second respondent had irregularly recognized the petitioners as landless poor persons without conducting a proper enquiry under Section 82 of the Act. In their complaints they alleged that the petitioners own lands and have income otherwise, in excess of the limits, specified in Section 82 of the Act, and therefore, they could not have been treated as landless poor persons.

5. The complaints of V. Rama Rao and Chinidi Ranga Rao were treated as an appeal by the first respondent under Rule 4 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for brevity "the Rules") {issued in G.O.Ms.No. 379 Revenue, (Endowments-I) dated 11.3.2003}. The first respondent issued notice to the petitioners to respond to the appeals preferred by V. Rama Rao and Chinidi Ranga Rao. The petitioners lodged objections *inter alia* contending that more than 2 ½ years had lapsed since the order of the Assistant Commissioner dated 18.7.2003, and thus no appeal could be entertained by the first respondent, as Rule 4 of the Rules enables exercise of appellate jurisdiction only within 30 days from the date of receipt of the decision or order of the Assistant

Commissioner.

6. Thereupon, the first respondent considered the complaints of V. Rama Rao and Chinidi Ranga Rao, exercising *suo motu* jurisdiction under Section 92 of the Act, and passed the impugned order, dated 26.8.2006.

7. The petitioners filed another W.P.No. 23699 of 2006, aggrieved by the action of the respondents in proposing to conduct auction for grant of leasehold rights of the lands of the Endowments Institution. By the judgment dated 15.11.2006, the Writ Petition was dismissed at the stage of admission. This court held that the petitioners failed to show that they had valid and current leases granted to them in the manner authorized by the Act and the Rules; and that if they were not cultivating tenants having a valid lease in the manner specified by Section 82 of the Act, they could not claim the status of landless poor persons either. If the petitioners are not the landless poor persons within the meaning of the Act, leases in their favour would stand abrogated by the declaration in Section 82(1) of the Act., held this Court.

8. Sri C. Raghu, the learned counsel for the petitioners, urges but a singular contention at the hearing of this Writ Petition. He contends that as the first respondent had initially entertained the objections of V. Rama Rao and Chitnidi Ranga Rao as an appeal under Rule 4 of the Rules and on realizing that the appeals were barred by limitation for having not been preferred within the period specified in Rule 4, the first respondent has taken up the matter *suo motu*. The first respondent ought to have issued a notice to the petitioners informing them that *suo motu* proceedings have been initiated. Support for this contention is placed on the decision of the Supreme Court in M/S D. N. ROY AND OTHERS VS. STATE OF BIHAR AND OTHERS[1]. In this judgment, the exercise of the Union Government's *suo motu* power under Section 30 of the Mines and Minerals (Regulation and Development) Act 1957, fell for consideration. The Supreme Court held that the order of the Central Government impugned does not show that it was made in the exercise of its *suo motu* power, but is purported to have been made on the basis of the application made to the 5th respondent under Rule 54 of the Mineral concession Rules 1960. However, in the context of the availability of a *suo motu* power, such power could be exercised, but since the power is judicial in nature, if the Central Government wanted to exercise its *suo motu* power, it should have intimated that fact as well as the grounds on which it is proposed to exercise such power to the appellant and ought have given him an opportunity to show cause against the exercise of *suo motu* power as well as against the grounds on which the Government sought to exercise its power (para-7 of the AIR report) .

9. In view of the principles declared in the aforementioned decision of the Apex Court and in further view of the fact that the first respondent also exercises quasi judicial

power under Section 92 of the Act, the order impeached cannot be sustained on the singular and short ground that it was passed without notice and opportunity to the petitioners, duly intimating them that though the appeals preferred by V. Rama Rao and Chitnidi Ranga Rao were time barred, yet the first respondent is exercising *suo motu* power (to consider the validity of the second respondent's order dated 18.7.2003 declaring the petitioners to be landless poor persons).

10. On the aforesaid analysis, the impugned order of the first respondent is set aside. The first respondent may issue a notice to the petitioners informing them that the first respondent proposes to exercise suo *motu* revisional power under Section 92 of the Act, specifying the grounds on which *suo motu* review the order of the second respondent dated 18.7.2003 is proposed. The first respondent shall consider whether the petitioners were lawful cultivating tenants of the lands of Sri Vejendulvari Tank at any time; were so for a continuous period of six years, as on the date of commencement of the Act; whether leases were granted to the petitioners after following due procedure under the provisions of the Act and the Rules; after the process of public auction on which bids were invited; whether the leases were granted to the petitioners after approval by the competent authority as required by the Rules and if not, whether the petitioners could claim to be landless poor persons as defined under Section 82 of the Act.

11. The Appeal, Rc.No. 449/2006 is remanded to the first respondent for a *de novo* consideration and disposal on merits, after issuing a notice to the petitioners. The first respondent shall de novo consider the issues in the appeal in the light of the observations made herein and shall pass appropriate orders, as expeditiously as possible, and in any event within a period of two months from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition is disposed of. No order as to costs.

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GODA RAGHURAM, J

Date: 2.01.2007
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[1] AIR 1971 SUPREME COURT 1045